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Attorneys for Respondent, Financial Freedom Senior Funding Corporation

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JOSIENA BROWN

Petitioner,

vs.

FINANCIAL FREEDOM SENIOR FUNDING  
CORPORATION, A SUBSIDIARY OF  
INDYMAC BANK, F.S.B.; MORTGAGE  
ELECTRONIC REGISTRATION SYSTEMS,  
INC. ("MERS"); FINANCIAL FREEDOM  
ACQUISITION, LLC; MTC FINANCIAL  
INC., dba TRUSTEE CORPS.; RICHARD J.  
REYNOLDS AND HYDEE J. MULICHAK;  
DOES 1 THRU 20

Respondents.

Case No.: 3:11-CV-02040-JSW  
(S.F. Superior Ct. Case No. PES-10-293632)

**~~PROPOSED~~ ORDER AND STIPULATION  
FOR CONTINUANCE TO FILE  
RESPONSIVE PLEADING TO PETITION**

*The Honorable Jeffrey S. White*

**TO ALL PARTIES HEREIN AND TO THEIR ATTORNEYS OF RECORD:**

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1       **IT IS HEREBY STIPULATED** by Petitioner Josiena Brown and Respondent Financial  
 2 Freedom Senior Funding Corporation (hereinafter referred to as “FFSFC”), through their respective  
 3 counsel of record stipulate as follows:

4       **WHEREAS**, Petitioner Josiena Brown (hereinafter referred to as “Petitioner”) filed her Petition  
 5 for Instructions with the San Francisco County Superior Court – Probate Division on April 22, 2011  
 6 and service was effectuated on FFSFC by mail to an out-of-state location at 190 Technology Parkway,  
 7 Suite 100, Norcross, Georgia 30092;

8       **WHEREAS**, FFSFC did not file a responsive pleading in State Court prior to removal of this  
 9 action to Federal Court, which based upon service by mail to an out-of-state corporation, would have  
 10 been due June 1, 2011;

11       **WHEREAS**, Respondent MTC Financial, Inc. (hereinafter “Respondent MTC”) filed a “Notice  
 12 of Removal of Action Under U.S.C. § 1441(b)” on April 26, 2011, which removed the matter to the  
 13 United States District Court for the Northern District of California. FFSFC was not served with the  
 14 Notice of Removal as required by *Federal Rules of Civil Procedure, Rule 4(l)(1)*;

15       **WHEREAS**, FFSFC was not served the Notice of Removal by any other party and also was not  
 16 served with Notice of Stay of Proceedings of the underlying state action in light of the removal to  
 17 federal court by the Clerk of the San Francisco Superior Court. As such, FFSFC was just advised of the  
 18 removal and subsequent actions taken in this case in Federal court;

19       **WHEREAS**, FFSFC would have been permitted to file a responsive pleading within seven (7)  
 20 days after removal pursuant to *Federal Rules of Civil Procedure, Rule 81(c)(2)(C)*, had the requisite  
 21 notice of removal been served on FFSFC;

22       ///

23       ///

1       **WHEREAS**, Petitioner Brown filed a First Amended Petition for Federal Civil Rights  
2 Violations and State Law Claims; Certification of Interest; Jury Demand on June 24, 2011. FFSFC was  
3 provided a copy of the First Amended Petition via email on June 27, 2011, but FFSFC has not been  
4 formally served by Petitioner.  
5

6       **WHEREAS**, FFSFC is willing to waive notice of removal and treat the email on June 27,  
7 2011 of Petitioner Brown's First Amended Petition for Federal Civil Rights Violations and State Law  
8 Claims; Certification of Interest; Jury Demand as properly effectuated service of same, in exchange for  
9 Petitioner Brown accepting as timely the filing of FFSFC's initial pleading in this matter on or before,  
10 July 18, 2011.  
11

12       **WHEREAS**, FFSFC will be filing a motion to dismiss with respect to the First Amended  
13 Petition and has agreed a hearing date will be set after the motion to remand which is currently  
14 scheduled for August 26, 2011.  
15

16       **THEREFORE, BASED UPON THE FOREGOING, IT IS HEREBY STIPULATED AS**  
17 **FOLLOWS:**

18       The time for FFSFC to file a motion to dismiss to Petitioner's First Amended Petition for  
19 Federal Civil Rights Violations and State Law Claims; Certification of Interest; Jury Demand shall be  
20 extended up to, and including, July 18, 2011 and a hearing date shall be set after the motion to remand  
21 currently scheduled for August 26, 2011.  
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1 Dated: July 6, 2011

MUSACCHIO & MONTANARI, P.C.

2  
3 By: 

R. Ernest Montanari; Brenna Daugherty, Attorneys for  
Respondent, Financial Freedom Senior  
Funding Corporation

6 Dated: July 6, 2011

COTTER & DEL CARLO

7  
8 By: 

Richard A. Canatella, Esq., Attorneys for  
Petitioner, Josiena Brown

11 PURSUANT TO STIPULATION, IT IS SO ORDERED,

13  
14 Dated: July 8, 2011

By: 

The Honorable Jeffrey S. White